

## **Senate Enrolled Act 590**

### **Unauthorized Aliens & Library Contracts**

#### **Synopsis**

- Contracts for services entered into by Indiana public libraries after June 30, 2011 must contain:
  - a provision requiring the contractor to enroll in and verify the work eligibility status of all newly hired employees through the E-Verify program; and
  - a provision that provides that the contractor is not required to verify the work eligibility status of newly hired employees through E-Verify if E-Verify no longer exists; and
- The contractor must also sign an affidavit affirming that the contractor does not knowingly employ an unauthorized alien. (This language can be included in the contract so that when the contractor signs the contract, the contractor is making the required affirmation.)
- The term “Contractor” includes a person or business. However, the general consensus is that the new clauses may not be necessary in a contract with an individual who does not hire employees.
- The law does not apply to contracts for supplies, subscriptions or license agreements, it only applies to contracts for services.
- Contracts between and among public libraries, public school corporations, state universities, and other political subdivisions are not required to have the new clauses, but a public library contract with a private college or private school would need to have the new contract clauses.
- There is no monetary threshold for contracts so the new contract clauses would need to be in ALL contracts for services that are with a business or a person who has employees or subcontractors.
- If the Friends group is paying for the service but the library is signing the contract, the new contract clauses need to be included in the contract. It doesn't matter if payment is donated, what matters is who is signing the contract.

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- If a library learns that a contractor is employing an unauthorized alien, the library must require the contractor to remedy the violation within thirty (30) days
  - If the Contractor does not rectify the situation within the thirty (30) day period, the library must cancel the contract
  - Caveat: If the library determines that terminating the contract would be detrimental to the public interest or public property, the library may allow the contract to remain in effect until the library procures a new contractor
  - The Contractor is liable to the library for any actual damages suffered as a result of the library terminating the contract

### **Sample contract language in the wake of SEA 590**

*In order to meet the requirements of SEA 590, the following language can be added to a contract for services. If the library is using the vendor's form contract, the library can request that the vendor add this statement to their form contract -or- the required statement can be provided on a separate piece of paper that the vendor can sign and that will be attached to the contract. (The below statement is language the office of the Indiana Attorney General has prepared for state agencies to use in their contracts)*

"The Contractor affirms under the penalties of perjury that he/she/it does not knowingly employ an unauthorized alien.

The Contractor shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3. The Contractor is not required to participate should the E-Verify program cease to exist. Additionally, the Contractor is not required to participate if the Contractor is self-employed and does not employ any employees.

The Contractor shall not knowingly employ or contract with an unauthorized alien. The Contractor shall not retain an employee or contract with a person that the Contractor subsequently learns is an unauthorized alien.

The Contractor shall require his/her/its subcontractors, who perform work under this contract, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The \_\_\_\_\_ Public Library may terminate the Contract for default if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the library."